



No. 24 Must I mention ITP at a job

Platelet article reprinted from: **March 2011**

Title: **Do I have to tell a potential employer about my ITP?**

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A member contacted us to ask if a recent diagnosis of ITP would affect her current application for a job. This is a very timely question as from the 1st October 2010 the UK Equality Act (www.equalityhumanrights.com/legal-and-policy/equality-act/) places limits on questions any potential employer can ask about health or disability during an interview process. The intention of this legislation is to stop employers asking questions about health or disability (including sickness absence) and get them to focus on whether applicants can do the job that is available.

Equality law applies to all organisations in every sector (small to large) and whether or not they use formal processes such as shortlisting and interviewing. Potential employers cannot refer an applicant to an occupational health practitioner or ask an applicant to fill in a questionnaire provided by an occupational health practitioner before the offer of a job is made (or before inclusion in a pool of successful applicants) except in very limited circumstances, which are listed below.

Now potential employers should follow strict interview procedures or they may risk legal action from applicants who believe that they have been treated unfairly. Questions relating to previous sickness absence count as questions that relate to health or disability. The aspect of this legislation that applies to recruitment to a new job covers everyone applying for a job.

The legislation differs according to the stage of the interview process. At the first stage where candidates are being selected to go forward to a final pool of candidates the questions that can be asked about health or disability are very limited. For example, at interview you can be asked about your health if the employer needs to know any one of the following:

- if you can take part in an assessment and if any adjustments to this assessment would be needed;
- if you can carry out a task that is an essential part of the work;
- to help monitor diversity among job applicants;
- if you are disabled because the employer wishes to increase the number of disabled people in their employment or that the job requires a disability; for the purposes of national security checks.

As a jobseeker, if you think that unlawful questions are being asked you can complain to the Equality and Human Rights Commission (www.equalityhumanrights.com). However, if you are asked prohibited questions, and then not employed, you may bring a claim of discrimination at an Employment Tribunal and the burden of proof would be on the employer to demonstrate that they had not discriminated.

Appropriate health-related questions will probably be asked at final interview stage or when you are offered a job. The Government recommend that if you feel you have been treated unfairly in the recruitment process because of your health (or disability), you can make a complaint to an Employment Tribunal. A complaint must be logged within three months of the date on which you were treated unfairly (refer to www.employmenttribunals.gov.uk/).

The Employment Tribunal can:

- decide whether the employer used unlawful practice;
- recommend whether the employer should take certain action, for example, offer to employ you or change its policy;
- order the employer to pay you compensation.

Platelet article reprinted from: **June 2011**

Title: **How is ITP and disability handled in the workplace?**

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Is ITP considered to be a disability?

The definition of the term 'disabled' is discussed in the recent 2010 Equality Act (www.equalities.gov.uk). The definition is however quite confusing and open to much interpretation. Basically, to be considered disabled your medical condition must cause:

- a physical or mental impairment;
- the impairment must have a substantial and long-term adverse effect on your ability to perform normal day-to-day activities.

Please note that it is the impairment rather than the condition that matters. So, many people with ITP do not qualify as disabled because their chronic condition results in little obvious physical or mental impairment.

Can I claim any disability benefits with ITP?

Using the current Disability Living Allowance criteria, disability benefits are unlikely to be paid to people just because they have a chronic illness such as ITP, but are most likely to be paid to those who have visible care needs or mobility problems. The cause of these needs can be either physical or mental. It is rare for someone with ITP to qualify for disability benefit unless they have an additional medical problem affecting their ability to look after themselves or to get about.

Can employers ask about my health at first interview stage?

As explained in the March 2011 Platelet, The Equality Act 2010 discourages pre-employment assessments before an offer of employment. But an assessment may be used to identify a disability/disabilities, which would impact on a candidate's ability to function satisfactorily at interview, for example a speech defect or hearing defect. The other area where the Act allows for a pre-employment assessment is in situations where a job role cannot be adjusted for a medical condition.

What happens if I am offered a job?

Following a job offer, the Equality Act does allow a pre-employment assessment, prior to confirmation of employment. However this requires the assessment to be relevant and focused. An employer has a duty of care not to adversely affect an individual's health, safety and welfare. This means that any employer needs to assess the potential risks of a job role to an individual.

How do I tell an employer about my ITP?

Failure to disclose a medical condition that may affect work place performance can result in dismissal. It may be a good idea to declare your ITP and explain fully what it is, how it affects you (highly individual) and any treatment you are having (what these treatments are, how often, how they affect you). By explaining this to your employer they are legally obliged to assess the job role and your ITP and make any adjustments necessary in the workplace so that you can do the job effectively and safely. At this stage the employer will need to make sure that their insurance policies are adequate to cover your employment.

Are employers able to discriminate in favour of me?

It is our understanding that just because you have ITP does not mean that your employer can discriminate for, or against you. Employers are able to discriminate against you if they cannot make the workplace safe. We understand from the recruitment offices that people with ITP would not be eligible for the armed forces or emergency services as the work place could not be made safe.